

REMARKS

Claims 1-18 were presented for examination and all claims were rejected. In the current amendment, claims 1, 2, 3, 7, 8, 10, 11, 12, 13, 17 and 18 have been amended. No new matter has been introduced. Upon entry of this amendment, claims 1-18 will be pending in this application, of which claims 1, 10, and 18 are independent. Applicants submit that pending claims 1-18 are in condition for allowance. All stated grounds for rejection have been addressed in the following comments. Applicants respectfully request reconsideration and allowance of claims 1-18 in view of the remarks set forth below.

OBJECTIONS TO HYPERLINKS AND XML CODE IN THE SPECIFICATION

The Examiner objects to the disclosure because it contains an embedded hyperlink and/or other form of browser-executable code located at:

- Paragraph [0059] Line 2 - hyperlink
- Paragraph [0060] Line 2 - hyperlink
- Paragraph [0061] Line 2 - hyperlink
- Paragraph [0065] Lines 1 and 2 - hyperlink
- Paragraph [0066] Lines 3, 11, and 12 - hyperlink
- Paragraph [0070] Lines 1 and 2 - hyperlink
- Paragraph [0072] Lines 6, 7, and 10 - hyperlink
- Paragraphs [0074] through [0081] - XML code
- Paragraph [0083] Lines 8 and 9 - hyperlink
- Paragraphs [0085] through [0090] - XML code
- Paragraph [0091] Lines 2 and 3 - hyperlink
- Paragraphs [0092] through [0101] - XML code
- Paragraph [0103] Lines 8 and 9 - hyperlink
- Paragraphs [0105] through [0110] - XML code
- Paragraph [0111] Lines 3 and 4 – hyperlink

Applicants respectfully traverse this objection.

Applicants submit that each of the cited hyperlinks and the portions of the xml code are used only to support the description of the claimed invention in the specification. Furthermore, Applicants submit that the hyperlinks and the XML code of the disclosure are not intended to be browser executable and are not intended to incorporate any references. Therefore, Applicants respectfully request the Examiner to withdraw the objection to the specification.

I. REJECTION DUE TO DOUBLE PATENTING

Claims 1, 10, and 18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1, 10 and 17 of co-dependent U.S. Patent Application No. 10/708,267 (“Co-Pending Application”). Dependent claims 2-9, 11-13, 16 and 17 are also rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 2-9, 11-13, 16 and 15 of the Co-Pending Application respectively. Applicants traverse this rejection. Nevertheless, to obviate this rejection, Applicants submit herewith a terminal disclaimer with respect to this current application.

II. CLAIM REJECTIONS UNDER 35 U.S.C. §102

Claims 10-12, 14, and 16-18 are rejected as anticipated by U.S. Patent Publication No. 2004/0128343 A1 to Mayer (“Mayer”) under 35 U.S.C. §102. Amended claims 10 and 18 are Independent Claims. Claims 11, 12, 14, 16 and 17 depend on and incorporate all of the patentable subject matter of independent claim 10 as amended. Applicants traverse these rejections and submit that Mayer fails to disclose each and every element recited in the claims as amended

A. Independent Claims 10 and 18 Patentably Distinguished over Mayer

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described, in a single prior art reference. Amended independent claims 10 and 18 are directed towards a method and an article of manufacture, respectively, for efficiently downloading a page of broadband content. These claims recite determining, by a bandwidth measurement device during retrieval a

bandwidth of a network connection over which a content file is retrieved, and establishing, by the download manager a size of the portion to retrieve responsive to the determination made by the bandwidth measurement device. Applicants submit that Mayer fails to disclose each and every element of the claimed invention as amended.

Mayer does not disclose a bandwidth measurement device determining during retrieval a bandwidth of a network connection over which the content file is retrieved and the download manager establishing a size of a portion of the content file to retrieve responsive to the bandwidth determination by the bandwidth measurement device. Rather, Mayer describes splitting a file into fixed segments prior to retrieval based on an expected bandwidth determined from previous average data rates of an average user (see Paragraph 49, Mayer). The files are split in Mayer by a program splitter located in a production facility, which is not accessed by an end user for download (see Fig. 2, Mayer). The production facility of Mayer provides segmented files to a library accessed by a web server, which in turn is accessed by an end user (see Fig. 2, Mayer). As the production facility and the program splitter are not in the retrieval path of the end user, the program splitter of Mayer is not responsive to a bandwidth measurement made during a retrieval of the file. The files of Mayer are segmented prior to retrieval by a system from which the file is not downloaded. Instead of a download manager establishing a size of a portion of the content file to retrieve responsive to the bandwidth measurement device determining the bandwidth during retrieval, Mayer fixes the size of the segments of the file prior to retrieval based on an expected bandwidth derived from previous data rates of an average user. Thus, Mayer fails to disclose a bandwidth measurement device determining during retrieval a bandwidth of a network connection over which the content file is retrieved, and the download manager establishing a size of a portion of the content file to retrieve responsive to the bandwidth determination by the bandwidth measurement device.

Because Mayer fails to disclose each and every element of independent claims 10 and 18, Applicants submit that claims 10 and 18 are patentable and in condition for allowance. Thus, Applicants request the Examiner to reconsider and withdraw the rejections of independent claims 10 and 18 under 35 U.S.C. §102.

B. Dependent Claims 11 and 12 Patentably Distinguished over Mayer

Dependent claims 11 and 12 are rejected by the Examiner as anticipated by Mayer under 35 U.S.C. §102. Amended claims 11 and 12 depend on and incorporate all of the patentable subject matter of independent claim 10 as amended. Applicants submit that Mayer fails to disclose any of the additional features of the claimed invention as recited in claims 11 and 12 as amended.

Claim 11 recites the method of claim 10 further comprising making, by the bandwidth measurement device, a second determination of the bandwidth of a network connection over which the content file is retrieved during retrieval and establishing, by the download manager responsive to the bandwidth measurement device, a second size of the portion of the content file to retrieve. Mayer does not describe making a second determination of bandwidth during retrieval. Therefore, Mayer does not disclose each and every element of claim 11 as amended.

Claim 12 recites the method of claim 10 further comprising using, by the bandwidth measurement device, a timer data value, a total size of the retrieval, and a current progress of the portion retrieved to determine when the download manager has downloaded a sufficient portion of the content file such that the download manager is able to download the remainder of the data file before the player application finishes playing the portion of the content file from mass storage. Mayer does not describe using a time data value, a total size of the retrieval and a current program to determine when the download manager has downloaded a sufficient portion of the content file. Therefore, Mayer does not disclose each and every element of claim 12 as amended.

Because Mayer fails to disclose each and every feature of amended claims 11 and 12, Applicants submit that amended claims 11 and 12 are patentable and in condition for allowance. Accordingly, Applicant respectfully request the Examiner to reconsider and withdraw the rejection of claims 11 and 12 under U.S.C. §102.

C. Dependent Claims 14, 16 and 17 Patentably Distinguished over Mayer

Dependent claims 14, 16 and 17 are rejected as anticipated by Mayer under 35 U.S.C. §102. Claims 14, 16 and 17 depend on and incorporate all of the patentable subject matter of independent claim 10 as amended. For the reasons discussed above in connection with claim 10, Mayer fails to disclose each and every element of independent claims 10. Thus, Mayer also fails to detract from the patentability of dependent claims 14, 16 and 17. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 14, 16 and 17 under 35 U.S.C. §102.

III. CLAIM REJECTIONS UNDER 35 U.S.C. §103

Claims 1-3, 5-8, 13, 15 are rejected as unpatentable over U.S. Patent Publication No. 2001/0029523 A1 to McTernan et al. (“McTernan”) and further in view of U.S. Pub. No. 2004/0128343 A1 to Mayer (“Mayer”) under 35 U.S.C. §103. Amended claim 1 is independent. Claims 2, 3 and 5-8 depend on and incorporate all of the patentable subject matter of independent claim 1 as amended. Applicants respectfully traverse this rejection and submit that neither McTernan nor Mayer, alone or in combination, teach or suggest each and every element recited in the claimed invention, as amended.

A. Independent Claim 1 Patentably Distinguished Over Mayer and McTernan

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. Amended claim 1 is directed toward a system for efficiently downloading a page of broadband content. Claim 1 recites determining, by a bandwidth measurement device during retrieval a bandwidth of a network connection over which a content file is retrieved, and establishing, by the download manager, a size of the portion to retrieve responsive to the determination made by the bandwidth measurement device. Applicants submit that neither McTernan nor Mayer, alone or in combination, teach or suggest each and every element of the claimed invention as amended.

McTernan and Mayer fail to teach or suggest a bandwidth measurement device determining during retrieval a bandwidth of a network connection over which a content

file is retrieved and the download manager establishing a size of the portion to retrieve responsive to the determination made by the bandwidth measurement device. Rather, Mayer describes splitting a file by a program splitter into fixed segments prior to retrieval based on an expected bandwidth determined from previous average data rates of an average user (see Paragraph 49, Mayer). The program splitter is located in a separate production facility and not in the retrieval path of the end user. As the files are segmented by the program splitter prior to and not during retrieval, the program splitter of Mayer is not responsive to a bandwidth measurement made during a retrieval of the file. Instead of a download manager establishing a size of a portion of the content file to retrieve responsive to the bandwidth measurement device determining the bandwidth during retrieval, Mayer fixes the size of the segments of the file prior to retrieval based on an expected bandwidth derived from previous data rates of an average user. Thus, Mayer fails to teach or suggest a bandwidth measurement device determining during retrieval a bandwidth of a network connection over which the content file is retrieved, and the download manager establishing a size of a portion of the content file to retrieve responsive to the bandwidth determination by the bandwidth measurement device.

Because McTernan and Mayer, alone or in combination, fail to teach or suggest each and every element of the claimed invention, Applicants submit independent claims 10 and 18 are patentable and in condition for allowance. Thus, Applicants request the Examiner to reconsider and withdraw the rejections of independent claim 1 under 35 U.S.C. §103.

B. Dependent Claims 2, 3, 5-8, 13 and 15 Patentably Distinguished Over Mayer and McTernan

Claims 2, 3, 5-8, 13 and 15 are rejected as unpatentable over McTernan in further view of Mayer under 35 U.S.C. §103. Claims 2, 3 and 5-8 depend on and incorporate all of the patentable subject matter of independent claim 1 as amended. Since McTernan in further view of Mayer fails to teach or suggest each and every feature of amended claim 1, as discussed above, McTernan in further view of Mayer fails to detract from the patentability of dependent claims 2, 3 and 5-8.

Claims 13 and 15 depend on and incorporate all of the patentable subject matter of independent claim 10 as amended. Since McTernan and Mayer, alone or in combination, fail to teach or suggest each and every element of independent claim 10 as discussed above, McTernan in further view of Mayer fails to detract from the patentability of dependent claims 13 and 15.

Because McTernan and Mayer, alone or in combination, fail to teach or suggest each and every element of the claimed invention, Applicants submit dependent claims 2, 3, 5-8, 13 and 15 are patentable and in condition for allowance. Thus, Applicants request the Examiner to reconsider and withdraw the rejection of claims 2, 3, 5-8, 13 and 15 under 35 U.S.C. §103.

C. Dependent Claim 4 Patentably Distinguished Over Mayer, McTernan, and Laplante

Claim 4 is rejected as unpatentable over McTernan, Mayer and in further view of the Dictionary of Computer Science, Engineering, and Technology by Phillip A. Laplante (Laplante) under 35 U.S.C. §103. Claim 4 depends on and incorporates all of the patentable subject matter of independent claim 1 as amended. As with McTernan and Mayer, Laplante fails to teach or suggest a bandwidth measurement device determining during retrieval a bandwidth of a network connection over which a content file is retrieved and the download manager establishing a size of the portion to retrieve responsive to the determination made by the bandwidth measurement device. Since McTernan, Mayer and Laplante, alone or in combination, fail to teach or suggest each and every feature of amended claim 1, as presented above, McTernan, Mayer and Laplante, alone or in combination, also fail to detract from the patentability of dependent claim 4.

Because McTernan, Mayer, and Laplante, alone or in combination, fail to teach or suggest each and every element of the claimed invention, Applicants submit dependent claim 4 is patentable and in condition for allowance. Applicants request the Examiner to reconsider and withdraw the rejection of claim 4 under 35 U.S.C. §103.

D. Dependent Claim 9 Patentably Distinguished Over Mayer, McTernan, and Murphy

Claim 9 is rejected as unpatentable over McTernan and Mayer and in further view of U.S. Pub. No. 2004/0078825 A1 Murphy (“Murphy”) under 35 U.S.C. §103. Claim 9 depends on and incorporates all of the patentable subject matter of independent claim 1 as amended. As with McTernan and Mayer, Murphy fails to teach or suggest a bandwidth measurement device determining during retrieval a bandwidth of a network connection over which a content file is retrieved and the download manager establishing a size of the portion to retrieve responsive to the determination made by the bandwidth measurement device. Since McTernan, Mayer and Murphy, alone or in combination, fail to teach or suggest each and every feature of amended claim 1, as presented above, McTernan, Mayer and Murphy, alone or in combination, also fail to detract from the patentability of dependent claim 9.

Because McTernan, Mayer, and Murphy, alone or in combination, fail to teach or suggest each and every element of the claimed invention, Applicants submit dependent claim 9 is patentable and in condition for allowance. Applicants request the Examiner to reconsider and withdraw the rejection of claim 9 under 35 U.S.C. §103.

CONCLUSION

In light of the aforementioned amendments and arguments, Applicants contend that each of the Examiners rejections has been adequately addressed and all of the pending claims are in condition for allowance. Accordingly, Applicants respectfully request reconsideration, withdrawal of all grounds of rejection, and allowance of all of the pending claims.

Should the Examiner feel that a telephone conference with Applicants' attorney would expedite prosecution of this application, the Examiner is urged to contact the Applicants' attorney at the telephone number identified below.

Respectfully submitted,

CHOATE, HALL & STEWART, LLP

Dated: November 30, 2007

/Christopher J McKenna/
Christopher J. McKenna
Registration No. 53,302
Attorney for Applicants

Choate, Hall & Stewart, LLP
Two International Place
Boston, MA 02110
(617) 248-5000